

United States patent application. Applicant, through his undersigned attorney, hereby traverses the restriction requirement in all of its respects, requests reconsideration and withdrawal of the requirement for restriction and further requests a prompt and thorough unitary examination of all of the claims pending in the application, on their merits.

Without prejudice to the foregoing traverse and in an effort to be fully responsive to the outstanding official action and further in an effort to move this application forward towards substantive examination, applicant provisionally elects the claims of group 1, as currently defined, for immediate prosecution.

HISTORICAL PERSPECTIVE

The instant restriction requirement is the fourth restriction requirement issued with respect to this United States patent application.

In the first restriction requirement dated 14 January 2002, restriction was required among four groups of claims. Claims 1 through 26, 35 and 52 through 74 were characterized as being drawn to an electrical control module power node purportedly classified in class 361, subclass 685. Claim 75 was characterized as being drawn to a power node control center purportedly classified in class 307, subclass 43. Claims 27 through 33, 36 through 45, 48 through 51 and 76 through 79 were characterized as being drawn to a power bus backplane purportedly classified in class 361, subclass 752. Claims 46 and 47 were characterized as being drawn to a module purportedly classified in class 361, class 679.

After grouping the claims into these four groups, the examiner asserted that the claims of groups 1 through 3 and group 4 were related as subcombinations disclosed as usable together in a single combination. In asserting that the subcombinations were

distinct if the subcombinations were shown to be separately usable, the examiner postulated various utilities for the claims in the four different groups.

In papers dated 5 and 11 March 2002, applicant traversed the 14 January 2002 restriction requirement, noted errors in the finding of distinctness by the examiner and requested reconsideration of the restriction requirement.

On 22 October 2002, the examiner issued a second official action setting forth a second restriction requirement, implicitly acknowledging errors in the first restriction requirement as addressed in applicant's papers of 5 and 11 March 2002.

In the second restriction requirement the examiner moved claim 25 from Group 1 to Group 2, accounted for previously unaddressed claim 34, moved claim 26 from Group 1 to Group 3 and classified newly added claims 80 through 93 in Group 1.

In a paper dated 23 December 2002, applicant responded to the second restriction requirement, traversing the same and requesting reconsideration on the basis of asserted errors in the examiner's reasoning proffered in support of the second restriction requirement.

On 9 April 2003 the examiner issued a third restriction requirement withdrawing the 12 October 2002 second restriction requirement and requiring restriction among four groups of inventions. In grouping the claims the examiner recognized the existence of claim 35, which had been omitted from the grouping of claims in the 22 October 2002 restriction requirement, and altered his position as to the classes and subclasses into which the claims of the respective groups were properly classified. The examiner continued asserting the general position that the claim groups were related as combination and subcombination inventions and, for the first time, additionally asserted

that the application contained claims directed to two different, allegedly patentably distinct, species of the invention, with species 1 being defined by Figures 1 through 8 of the specification and species 2 being defined by Figures 9 through 13 of the specification.

Applicant responded to this third restriction requirement in papers dated 11 and 12 August 2003. Applicant traversed the third restriction requirement in all of its respects, requested reconsideration and withdrawal of the third restriction requirement and endeavored to identify errors by the examining attorney in making the third restriction requirement. Specifically, applicant asserted that the examiner had commingled the inventions defined by claim groups 1 through 3 and had asserted that the inventions of claim groups 1 and 2 were a combination. Moreover, applicant noted that the purported classification of the claims had been changed (at least in part due to a change in the United States Patent and Trademark Office's system of classification) and that it was unclear as to which of the claim groups the examiner asserted was related to claim group 3 as a combination/subcombination.

The following three tables summarize the first three restriction requirements made in this application:

14 JANUARY 2002				
Group	Examiner's Characterization	Claims	Class	Subclass
1	Electrical Control Module Power Nodes	1-26, 35, 52-74	361	685
2	Power Node Control Center	75	307	43
3	Power Bus Backplane	27-33, 36-45, 48-51, 76-79	361	752
4	Module	46-47	361	679

22 OCTOBER 2002

Group	Examiner's Characterization	Claims	Class	Subclass
1	Electrical Control Module Power Nodes	1-24, 52-74, 80-93	361	685
2	Power Node Control Center	25, 75	307	43
3	Power Bus Backplane	26-34, 36-45, 48-51, 76-79	361	752
4	Module	46-47	361	679

9 APRIL 2003				
Group	Examiner's Characterization	Claims	Class	Subclass
1	Electrical Control Module Power Nodes	1-24, 35, 52-74, 80-93	700	286
2	Power Node Control Center of Modular Construction	25, 75	307	12+
3	Power Bus Backplane	26-34, 36-45, 48-51, 76-79	361	788
4	Module	46-47	361	796

Applicant respectfully notes that not only have claims been moved from group to group in the course of issuance of the three prior restriction requirements but also that the classification as to the groups and the claims has, to some extent, changed.

THE INSTANT, FOURTH RESTRICTION REQUIREMENT

In the 15 June 2004 restriction requirement, the examiner reduced the claim groups from four to three, effectively eliminating prior group 2 and placing the claims of prior group 2, namely claims 25 and 75, into group 1. The following table sets forth the claim groupings, the examiner's characterization of the subject matter to which the

claims in each group are directed, and the class and subclasses to which those claims were assigned in the 15 June 2004 restriction requirement.

15 JUNE 2004				
Group	Examiner's Characterization	Claims	Class	Subclass
1	Electrical Modular Power Mode(sic)	1-25, 35, 52-75, 80-93	700	286
2	Power Bus Backplane	26-34, 36-45, 48-51, 76-79	361	788
3	Module	46-47	361	796

In the restriction requirement the examiner has continued to assert combination/subcombination restriction. Specifically, the examiner states as follows:

Inventions I and II-III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination has separate utility such as a power distribution control system, for example in vehicle technology. The subcombination has separate utility such as a backplane and a module, the backplane can be used such as buses panel in a network telecommunication system or host system, and the module can be used in vary electronic devices.

Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as buses panel can be used in telecommunication system, and invention III has separate utility such as battery or power supply module. See MPEP § 806.05(d).

It is particularly noteworthy that the examiner's comments, as set forth above, correctly state the requirements for a finding of distinctness in the abstract but do not apply those stated requirements to the instant application. Specifically, the examiner has stated that inventions in a combination/subcombination relationship are distinct if it can

be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability and (2) that the subcombination has utility by itself or in other combinations.

Applicant respectfully notes that when the examiner sought to apply that correct statement of the law to the facts of the instant case, the examiner did *not* include any statement as to whether the combination as claimed required the particulars of one of the subcombinations for patentability, as required by MPEP 806.05(c). Indeed, the examiner only provided some gross speculation as to what utility *the combination had* (which, interestingly, is **not** part of the requirement for a showing of distinctiveness) and made no statement whatsoever as to the patentability of the combination and whether the combination as claimed did or did not *require the particulars of the subcombination for patentability*. This was error by the examiner, amounting to a substantial deviation from the requirements of Chapter 800 of the Manual of Patent Examining Procedure. This error, in and of itself, is sufficient to require reconsideration and withdrawal of the instant restriction requirement.

LEGAL, PRACTICAL AND EQUITABLE CONSIDERATIONS MANDATE EXAMINATION OF APPLICANT'S CLAIMS IN A SINGLE APPLICATION

A close examination of the legal, practical and equitable considerations surrounding the present case compels withdrawal of the examiner's restriction requirement and requires unified examination of all the claims in this application.

In levying the restriction requirement, the examiner divided the claims pending in the application into three groups. The examiner asserted that group 1 embraced claims 1-25, 35, 52-75 and 80-93 which were purportedly drawn to an "electrical control module

power mode” (sic) which the examiner asserted to be properly classified in class 700, subclass 286.

The examiner asserted group 2 to embrace claims 26-34, 36-45, 48-51 and 76-79 which were purportedly drawn to a “power bus backplane”, which the examiner asserted to be properly classified in class 361, subclass 788.

The examiner further asserted that group 4 embraced claims 46 and 47 which were purportedly drawn to a “module”, which the examiner asserted to be properly classified in class 361, subclass 796.

Some of the independent claims the examiner asserted to be in group 1, namely claims 1, 52 and 80 broadly claim modular power control nodes having a backplane and functional modules connecting to the backplane. Claims 1 and 52 recite these features explicitly; claim 80 is directed to a power bus backplane and additionally recites a control module including programmable microprocessor means. Claims 25 and 75 also recite a backplane and functional modules.

Claims 26 and 76, which are the only independent claims in group 2, are directed to a power bus backplane and also include bus connectors with terminals for receiving modules, as recited in independent claims 1, 52 and 80 of group 1, as well as in independent claim 46 of group 3.

Claim 46 is the independent claim in the examiner’s group 3 and recites a module for use with a backplane and having terminals to connect to the backplane.

The examiner has asserted that the claims in these three groups define inventions which are purportedly “distinct”. In support of the contention that the groups into which the claims had been segregated defined distinct inventions, the examiner presented some

perfunctory, highly conclusory examples purportedly supporting the examiner's restriction requirement.

Concerning those examples, applicant respectfully notes that the test for whether inventions are "distinct" is a multi-prong test: The term "distinct means that two or more subjects as disclosed are related...but are capable of separate manufacture, use, or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER". MPEP 802.01. (emphasis in the original)

Speculation as to the availability of subject matter which is an alternative to that defined one of the groups of claims and suitability of that alleged alternative subject matter for use with another group of claims does not satisfy the test. In order to show that two or more groups of claims are separately usable one from another, the examiner must cite concrete examples, including components, alternative structure and the like, by which the group of claims at issue could be used with something other than one of the other groups of claims. The examiner failed to do this.

In support of this speculation, the examiner cited MPEP 806.05(d) which states that two or more claimed subcombinations which are disclosed as being usable together in a single combination "are usually distinct from each other" if they can be shown to be separately usable. However, MPEP 806.05(d), on which the examiner based his distinctness position, addresses only the "separately usable" prong of the multi-prong test for distinctness; **MPEP 806.05(d) is silent respecting the patentability prong of the distinctness test, namely whether the inventions defined by the claims at issue are patentable over each other.**

The following is for purposes of the restriction issue only, and without prejudice to whatever future position(s) applicant may take in the course of prosecution as respecting patentability of any of the claims pending in this application and/or in any divisional application applicant may file: Applicant is not necessarily in agreement with the examiner that the inventions defined by the claims, as segregated into the three groups the examiner has defined, represent groups of inventions which are usable in any meaningful way alone, without using any of the inventions defined by the claims of another one of the three groups. It is not at all apparent to applicant that the “electrical control module power nodes” (the examiner’s characterization of the claims placed into group 1) have any utility whatsoever without a power bus backplane, which is the examiner’s characterization of the claims placed into group 2.

Claim 1 in its current form recites “an electrical modular power node” which is recited to include “a power bus backplane” and “a plurality of functional modules” having a “connector for connection to a bus bar” of the backplane. Claim 1 is silent respecting any other power connection means. Hence, for purposes of restriction analysis it must be concluded that the invention defined by claim 1 would have utility only with a power bus backplane, which is the subject of the claims of group 2, since the node has to receive power in order to function and power would be available only from the power bus backplane (no other power supply element or source is recited). Applicant notes that the examiner has not made any showing of any other power bus backplane with which the invention defined by claim 1 could be used and have the required utility. Lacking such a showing, applicant accordingly respectfully submits that the examiner has not made an adequate showing of the purported separate utility of the claims of group 1 and group 2.

Applicant further notes that claim 46, which is the independent claim in group 3, specifically recites “a module **for use in connection with** a power bus backplane node...”. Hence, by its very language, the “module” defined by claim 46 must be used with or as a part of “a power bus backplane node”. The examiner has correctly noted that the claims of group 2 are drawn to a power bus backplane. Applicant notes that the claims of group 3, on their face, specifically require that the modules defined by those claims be used with a power bus backplane. Hence, the inventions defined by the claims of group 3 are not usable by themselves but must be used with a power bus backplane as recited in the claims of group 2. The examiner has made no showing of any other power bus backplane with which the claims of group 3 might be used. Lacking such a showing by the examiner, applicant respectfully submits that the examiner erred in contending that there are separate uses for the claims of group 3 and group 2.

Applicant respectfully submits that, again **for purposes of restriction analysis only** and without prejudice to whatever position applicant may take on patentability in the course of prosecution of the claims on their merits, the claims in the three groups into which they have been segregated by the examiner may not be patentable over one another. Without prejudice to that position, applicant respectfully notes that whether or not the claims of the respective three groups are patentable over one another, it is the examiner’s burden to show lack of patentability of the groups of claims vis-à-vis one another in order to satisfy the patentability prong of the distinctness test. Applicant respectfully notes that the restriction requirement is silent respecting the patentability of any claim, in any one of the three groups of claims, vis-à-vis any claim in any of the other groups. Applicant further respectfully notes that the fact that the claims have been

arbitrarily categorized into separate classes and subclasses by the examiner in levying the restriction requirement does not address the issue of the patentability of the groups of claims vis-à-vis one another (in the context of the patentability prong of the distinctness test for purposes for restriction analysis).

Applicant notes that there are many common elements shared by the independent claims the examiner segregated into separate, purportedly “distinct”, groups. For example, independent claim 76 (placed by the examiner into group 2) and independent claim 75 (placed by the examiner into group 1) both recite “backplanes” with “bus bars” or “bus connectors”. This being the case, applicant respectfully submits, **without prejudice and for restriction purposes analysis only**, it is probably unlikely that claims 75 and 76 are unobviously patentable one over another.

For the foregoing reasons, applicant respectfully submits that the examiner’s restriction requirement is erroneous, does not meet the controlling criteria for a finding of distinctness and should be withdrawn.

The examiner has further based the distinctness position on an assertion that the inventions defined by the three segregated groups of claims are distinct because they purportedly “have acquired a separate status in the art as shown by their different classification...”. Applicant respectfully submits that this bald conclusion does not support a finding of distinctness. Classification in the sense used by the examiner relates to where the patents, which might issue containing such claims, would be classified. Asserting that the issuing patents would be differently classified essentially implicitly presumes that the claims of the prospective patents would be patentably distinct one from another. However, as demonstrated above, there has been no showing by the examiner of

patentable unobviousness among the three groups of claims. Without a showing of patentable unobviousness among the groups of claims, the assertion that the claims in the groups, were they to issue in different patents, would be in three different classes is unsupported speculation.

The examiner has also asserted that the claims defining the three groups of the invention are distinct because they purportedly “have acquired a separate status in the art because of their recognized divergent subject matter...”. Applicant respectfully submits there has been no showing of any “divergent subject matter”. Indeed, a straight-forward reading of the claims reveals that there are many, many elements which are common to the claims of the three groups, as discussed generally above. There has not been a showing of the claims defining the inventions of the three groups having acquired any separate status in the art or having been recognized by anyone as presenting “divergent” subject matter. Indeed, all of the claims in all of the groups are broadly directed towards power distribution using a modular control center defining a power node and a power bus backplane providing power to and/or taking power from that node. Applicant respectfully submits that far from presenting “divergent” subject matter, the claims arguably could better be characterized as presenting “convergent” subject matter. All of the claims could certainly be considered to converge towards a modularly constructed power node control center connected to and including a power bus backplane.

THE REQUIRED SCOPE OF THE SEARCH

The most salient consideration for insisting upon restriction and determining the propriety of a restriction requirement is the scope of the examiner's search for prior art.

Applicant is entitled to a full and thorough search of the prior art as a consequence of having filed his application and having paid the statutory application fee:

The director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the director shall issue a patent therefor. 35 U.S.C. 131

Restriction is proper only where an examiner would be unduly burdened by searching numerous, *unrelated* inventions or technologies. The scope of a search for related inventions, even though possibly burdensome, cannot by itself justify restriction of related inventions. If an application includes claims to related inventions which are distinct or independent inventions, the examiner **must** examine the application on its merits, in its entirety, if the search and examination of the entire patent application can be made without a serious burden on the examiner:

If the search and examination of **an entire application** can be made without serious burden, the examiner **must examine it on the merits, even though it includes claims to independent or distinct inventions**. MPEP 803.

In developing a search strategy and mapping the scope of a search, claims are to be given their broadest reasonable interpretation, both literally and by equivalents:

All subject matter that is the equivalent of the subject matter as defined in the claim, even though specifically different from the definition in the claim, must be considered unless expressly excluded by the claimed subject matter. MPEP 904.01(b)

The examiner will not be unduly burdened by searching and examining all of the claims presented by applicant in a single application. The examiner's search will not be narrowed or reduced by compliance with the restriction requirement, since applicant has clearly manifested his intent to claim each novel and nonobvious aspect of the disclosed

functional module and power bus backplane subject matter in a power node control center as evidenced by the claims in the application.

In this regard, applicant's claim 1 recites a modular power node which includes a power bus backplane and a plurality of functional modules. The power bus backplane language appears again in the claims of group 2 with these claims all being directed to a power bus backplane either alone or in combination with other structure. The claims of group 3 recite a module for use in connection with a power bus backplane. Hence, claims in each of the three groups recite modules and power bus backplanes thereby effectively defining the scope of the search which should be performed relevant to the patentable novelty and unobviousness of the invention. Clearly, a search respecting any of the three groups of claims must encompass the appropriate classes and subclasses for the functional module component of the power node control center and the appropriate classes and subclass for the power bus backplane component of the power node control center.

The examiner's instructional guidelines for performing a search for any application are set forth in the MPEP. The guidelines require the examiner to search in classes and subclasses in which arguably distinct (as defined by the MPEP) inventions would be classified:

"Not only must the art be searched with which the invention claimed is classifiable, but **also all analogous arts regardless of where classified.**

The determination of when arts are analogous is at times difficult. It depends upon the necessary essential function or utility of the subject matter covered by the claims, and not upon what it is called. MPEP 904.01(c) (emphasis added).

A proper field of search normally includes the subclass in which the claimed subject matter of an application would be properly classified...

In outlining a field of search the examiner should note every class and subclass under the U.S. Patent Classification system and other organized systems of literature, **that may have material pertinent to the subject matter as claimed.** Every subclass, digest and cross reference art collection pertinent to each type of invention claimed should be listed, from the largest combination through the various subcombinations to the most elementary part. **The search should extend to all probable areas relevant to the claimed subject matter and should cover the disclosed features which might reasonably be expected to be claimed.** MPEP 904.02(a) (emphasis added).

It is a prerequisite to a speedy and just determination of the issues involved in the examination of an application that a careful and comprehensive search, commensurate with the limitations appearing in the most detailed claims in the case, be made in preparing the first action ... It is normally not enough that references be selected to meet only the terms of the claims alone, especially if only broad claims are presented; **but the search should, insofar as possible, also cover all subject matter which the examiner reasonably anticipates might be incorporated into applicant's amendment.** MPEP 904.03, ¶ 1 (emphasis added)

In doing a complete search, the examiner should find and cite references that, while not needed for treating the claims, would be useful for forestalling the presentation of claims to other subject matter regarded by applicant as his or her invention, by showing that this other subject matter is old or obvious. MPEP 904.03 ¶ 2

In selecting the references to be cited, the examiner should carefully compare the references with one another and with the applicant's disclosure... MPEP 904.03 ¶ 3.

From the above-quoted guidelines, it is clear that the scope of a proper search includes:

1. Classes and subclasses in which the claimed subject matter is classified; this means that classes and subclasses in which functional modules and power bus backplanes are classified must be searched;
2. Classes and subclasses that may have material pertinent to the claimed subject matter; this means that classes and subclasses having material

pertinent to functional modules and power bus backplanes, such as devices for connecting modules to power bus backplanes, must be searched;

3. Classes and subclasses containing subject matter present in the disclosure which might reasonably be expected to be claimed during the prosecution; this means designs for such modules and power bus backplanes must be searched; and

4. Classes and subclasses that may contain subject matter disclosing material related to features which might reasonably be expected to be claimed; this means classes for particular power bus bars must be searched.

The various disclosed and claimed structures, namely the functional modules, backplane, bus bars, control modules, power node control center, etc. are interrelated, work together and merit patent protection. They are all directed to a common technology, namely control and regulation of electrical power by functional modularly constructed nodes working together with power bus backplanes via which power is supplied and delivered, principally but not exclusively for shipborne applications. The claims stem from a set of core inventive concepts, namely modular construction of nodes performing control and power modification and monitoring tasks, receiving power from and supplying power to a bus via a connection backplane.

As demonstrated above, no matter which group of claims is examined, the search must embrace functional modules and power bus backplanes defining the power node control center subject matter. Accordingly, the searches performed by the examiner will be essentially identical regardless of which group of claims the examiner initially searches. As such, it would waste of time, money and energy to perform the same search, namely a search in the classes and subclasses for functional modules and in the classes and subclasses for power bus backplanes, which together essentially define the power

node control center, three times. This alone should be sufficient reason for the examiner to reconsider and withdraw the restriction requirement and to proceed with a meritorious examination of all of the claims pending in the application.

THE PROPOSED RESTRICTION WOULD BE UNDULY ECONOMICALLY BURDENSOME ON APPLICANT

While the Patent and Trademark Office has a legitimate interest in obtaining proper revenue from filing, issuance and maintenance fees, it does not have unrestrained power to tax inventors or the entrepreneurial enterprises employing them. Applicant is entitled to patent protection for each of the nonobvious inventive aspects of the subject matter applicant has disclosed. If the applicant is forced to divide this application into three separate patent applications as required by the examiner, this will be unduly and unfairly burdensome to the applicant as a result of the fees and costs associated with prosecuting and maintaining two additional patents.

Table 1 sets forth the divisional application filing costs which would be incurred by the applicant in the event the restriction requirement stands:

TABLE 1: DIVISIONAL APPLICATION FILING COST

Group Number	I	II	III
Independent Claims	6	2	1
Excess Independent Claims	3	0	0
Excess Independent Claim Fee	\$600.00	0	0
Total Claims	68	23	2
Excess Claims	48	3	0
Excess Claims Fee	\$2,400.00	\$150.00	\$0.00
Basic Filing Fee	\$300.00	\$300.00	\$300.00
Total Filing Fee	\$2,700.00	<u>\$450.00</u>	<u>\$300.00</u>
Excess Filing Fees		{---750.00---}	

Already Paid by Applicant at Filing	\$1,142.00
Already Paid by Applicant to Add Claims 52-79	{ \$744.00 }
Already Paid by Applicant to Add Claims 80-93	\$304.00
Filing & Claims Fees Paid by Applicant to Date	\$2,190.00

As can be seen from Table 1, applicant will be forced to pay additional filing fees of \$750.00 if the restriction requirement is not withdrawn.

As further indicated on Table 1, applicant has already paid \$2,190.00 in filing and claims fees. If applicant is forced to adhere the restriction requirement, approximately \$1,146.00 of this will be forfeited since three of the independent claims and twenty-five claims in total will not be examined in the instant application despite the fact that applicant has paid fees therefor. Instead, if applicant elects the claims of Group 1 for immediate prosecution in this application, applicant will be forced to pay \$750.00 additional to secure examination in two divisional applications of the three extra independent claims and the twenty-five total extra claims for which applicant has already paid. Hence, applicant will in effect incur an initial, non-recoverable penalty in the form of government fees of about \$1,896.00 (\$1,146.00 + \$750.00) if applicant is required to adhere to the outstanding restriction requirement.

Applicant further notes that the figures in Table 1 do not include attorney fees, associated costs and expenses. The attorney fees associated with filing each such divisional patent application would probably be around \$1,100.00; this figure is taken by analogy from the figure appearing in the AIPLA Report of Economics Survey 2003 for

the filing of a previously prepared U.S. patent application in the United States as a PCT application.

Furthermore, applicant will be faced with preparing amendments and arguments for the two divisional applications in response to official actions issued by the United States Patent and Trademark Office. Again based on the AIPLA Report of Economics Survey 2003, from figures given for the costs to prepare an amendment and argument of minimal complexity it can be expected that the applicant will face fees of in the neighborhood of \$2,200.00 for each amendment and argument responding to an official action.

Additionally, there will be attorney fees associated with the payment of any issue fee if allowed claims are obtained. This will amount to about \$700.00 per application, again based on the AIPLA Report of Economic Survey 2003. Add to this fees for preparing and filing information disclosure statements and for ordinary, routine reporting letters to applicant, the result is that attorney fees associated with the filing and prosecution of the two divisional applications could easily amount to \$7,000.00 or \$8,000.00 per application, leading to a further incremental cost to applicant of from \$14,000.00 to \$16,000.00 if the restriction requirements stands.

Table 2 presents the issue fees and maintenance fees applicant will face in the event the restriction requirement stands and applicant is successful in prosecuting the instant parent application and two divisional applications to allowance:

TABLE 2: PATENT MAINTENANCE COST

Number of Patents	1	2	3
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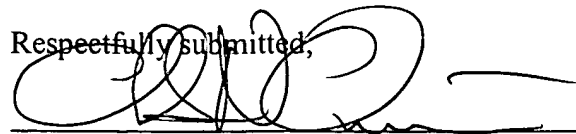
Issue Fee	1,400.00	2,800.00	4,200.00
1 st Maintenance Fee	900.00	1,800.00	2,700.00
2 nd Maintenance Fee	2,300.00	4,600.00	6,900.00
3 rd Maintenance Fee	3,800.00	7,600.00	11,400.00
TOTAL	8,400.00	16,800.00	25,200.00

From Table 2, which presents the maintenance fees at today's new, recently enacted level, it is apparent that applicant will face issue and maintenance fees amounting to \$16,800.00 extra, over and above the cost to issue and maintain a single patent directed to the invention, if the restriction requirement stands. When this figure is combined with the figures discussed above, the total financial penalty applicant faces in just official fees amounts to about \$18,696.00 (\$16,800.00 + 1,896.00) as a result of the restriction requirement. If \$14,000.00 in attorneys fees are added, the total financial penalty resulting if the restriction requirement stands is close to \$33,000.00 (\$18,696.00 + 14,000.00). Applicant should not be burdened in this manner and that the restriction requirement should be reconsidered and withdrawn in its entirety.

CONCLUSION

The outstanding restriction requirement should be withdrawn and all of the claims pending in the application should be examined forthwith, on their merits.

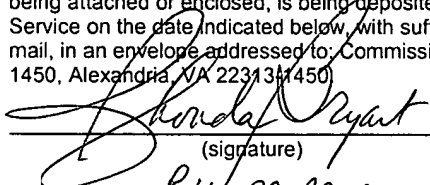
To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of this paper and/or any accompanying papers submitted herewith, please charge all such fees to deposit account 50-1943.

Respectfully submitted,


Date: December 15, 2004

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<p align="center">CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8(a)</p> <p>I hereby certify that this paper, along with any paper referred to as being attached or enclosed, is being deposited with the United States Postal Service on the date indicated below, with sufficient postage, as first class mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450</p> <p> _____ (signature)</p> <p>BY: <u>RHONDA BRYANT</u></p> <p>DATE: <u>DECEMBER 15, 2004</u></p>
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